Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1285

JACK MASCHHOFF
Petitioner,
v.
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, LOCAL 22 NEWSPAPER GUILD OF DETROIT, AND EMIL MAZEY
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR GUILD LOCAL 22 IN OPPOSITION

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QUESTION PRESENTED

Whether the complaint, in an independent action to set aside a judgment for fraud, fails to state a claim upon which relief can be granted, where the alleged fraud pertains to matters at issue in the original action, but there is no allegation that the purported fraud

prevented plaintiff from fully presenting his case, and there is no averment of a deliberately planned and carefully executed scheme to defraud the court or to otherwise tamper with justice.

COUNTERSTATEMENT OF THE CASE

Petitioner Jack Maschhoff was laid off from his employment at the UAW in 1970. His union, Guild Local 22, grieved his layoff but refused to take the grievance to arbitration.

In August, 1974, Maschhoff sued the UAW for breach of collective bargaining agreement and the Guild for breach of the duty of fair representation. The District Court granted summary judgment to defendants.[1] After receiving briefs on the merits, the Sixth Circuit dismissed Petitioner's appeal as untimely.[2] Certiorari was denied.[3]

In November, 1976, his appeal having gone awry, Maschhoff filed the present complaint seeking relief from the prior judgment on the basis of "fraud." The fraud allegedly consisted of false statements by defendants in their affidavits and at oral argument.[4]

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[1] *Maschhoff v. Automobile Workers*, 89 L.R.R.M. 2098 (E.D. Mich 1975).

[2] *Maschhoff v. Automobile Workers*, No. 75-1922 (6th Cir. 1975)

[3] *Maschhoff v. Automobile Workers*, 425 U.S. 993 (1976). The Court also denied rehearing, as did the Court of Appeals and District Court.

[4] Complaint, Paragraph 17, p. 9 of the petition.

Although the complaint purported to be "brought under" F.R.Civ.P. 60(b)(6),[5] the District Court treated it as an independent action to relieve a party from judgment.[6] The court dismissed the complaint because, even if true, it alleged intrinsic fraud, *i.e.*, fraud concerning matters at issue and determined in the prior action. Such fraud was held insufficient to support an independent action for relief from judgment because to grant relief would be to try anew issues previously determined.[7]

The Sixth Circuit affirmed dismissal of the complaint because there was no allegation as to why, if misrepresentations were indeed made, Maschhoff failed to come forward with proofs which would place the misrepresented matters in dispute. And, there was no allegation that the documents in question were not available to Maschhoff through discovery or otherwise. The court felt it unnecessary to rule on the continued vitality of the distinction between intrinsic and extrinsic fraud. Petitioner's Appendix, 34.

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[5] F.R.Civ.P. 60(b)(3) provides for motions for relief from judgment on the grounds of fraud; such motions are subject to a one year limitations period which, for Petitioner, had elapsed. Hence, Petitioner chose the general subsection, 60(b)(6), as his vehicle. But, the grounds specifically enumerated in the previous subsections cannot be used as a basis for relief under subsection 60(b)(6). *Klaprott v. United States*, 335 U.S. 601, 613 (1949); *United States v. Karahalias*, 205 F2d 331, 333 (1953).

[6] Although Rule 60 provides for motions for relief from judgment, it contains a saving clause stating that the rule does not limit the courts' power to entertain an independent action to relieve a party from judgment or set aside a judgment for fraud on the court.

[7] Because the original judgment was based on a finding that the Guild breached no duty and the claim against the UAW was therefore not reached, the District Court discussed only the allegations of fraudulent statements by or on behalf of the Guild. Petitioner's Appendix, 31.

ARGUMENT

The inadequacy of the petition is evident at first reading. Petitioner has failed to present his case with accuracy, brevity and clearness, and that alone is sufficient reason to deny the petition.[8]

Petitioner argues his case only. There is no attempt to demonstrate the larger impact or recurring nature of whatever issues he is trying to advance. Even if there is some issue of public importance lurking in the petition, it is posed, at best, abstractly, and this case is not meaningful litigation for the resolution of such an issue. See *SS Monrosa v. Carbon Black Export*, 359 U.S. 180, 184 (1959).

The decision of the Sixth Circuit is palpably correct. The Court long ago held that an action to set aside a judgment for fraud must involve "some hindrance besides the negligence of the [party]" in presenting his own case. *United States v. Throckmorton*, 98 U.S. 61, 64 (1878). The "absence of any declaration of the means by which the fraud has been discovered or can now be established" is a "fatal defect" in a complaint for relief judgment due to fraud. *Id.* at 70. The critical inquiry is whether the "unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception . . ." *Id.* at 65.

Here, the documents purportedly establishing the alleged fraud were attached to the complaint and appended to the petition. Exhibits A, C, D, and F

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[8] Supreme Court Rule 23.4: "The failure of a petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be sufficient reason for denying his petition."

(Petitioner's Appendix, pp. 39, 41, 42, 44) *were also presented to the District Court in the original action*, along with the collective bargaining agreement governing arbitration. There is no claim that these or any other documents are false or were kept from Maschhoff and the lower courts.

Nor is there any well-pleaded allegation of "a deliberately planned and carefully executed scheme to defraud" the Petitioner and the courts, as there was in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 245 (1944). This or similar "tampering with the administration of justice" must be pleaded in order to state a claim for relief from judgment due to fraud on the court. *Id.* at 246.

In short, there is no coherent claim of deception, trick or artifice. Petitioner's argument is no more than an assertion that his version of the facts is true and Respondents' is false. A timely appeal in the original action was the place to make that argument. As the court noted in *Throckmorton*, the "endless nature of the strife" is the mischief of retrying cases via actions for relief from judgment due to fraud. 98 U.S. at 69. That mischief is present here, and Respondents are entitled to repose in this matter.

CONCLUSION

The Court should therefore deny the petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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